

### REMARKS

Claims 17, 22, 26, 29, 31, and 34 are pending in the application upon entry of the amendments. Independent claim 22 has been amended to better describe certain aspects of the invention. Favorable reconsideration in light of the amendments and the remarks which follows is respectfully requested.

#### The Obviousness Rejection

Claims 17, 22, 26, 29, 31, and 34 have been rejected under 35 U.S.C. § 103(a) over Erickson (U.S. Patent 6,368,350) in view of Fuhrmann (U.S. Patent No. 5,002,576). Erickson relates to an intervertebral prosthetic device (IPD). The IPD 10 includes a first end piece 20, a second end piece 21, and an intermediate piece 22 (Fig. 6 of Erickson). Fuhrmann relates to an intervertebral disk endoprosthesis. The intervertebral disk endoprosthesis is filled with an elastic material 2 and provided with cover plates 3 and 4 at its end faces, and has a circular or elliptical corrugated tube 1 surrounding the elastic material, the tube being terminated by cover plates (Abstract and Fig. 1 of Fuhrmann).

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. In order to establish a *prima facie* case of obviousness, the cited art document or documents when combined must teach or suggest all claim features. See MPEP §706.02(j).

The claimed intervertebral disk implant contains a cover plate and a base plate that have a declination of the corners facing each other away from each other. Because of the declination of the corners, the cover plate does not contact the base plate in all of the possible movements. As a result, the edges of the cover plate and base plate would not be broken or abraded, thereby extend the lifetime of the intervertebral disk implant (See page 15, line 28-page 16, line 6 of the subject specification). To this end, independent claim 22 recites ***edges of a cover plate and of a base plate have a declination of corners facing each other away from***

***each other and in all of possible movements the cover plate does not contact the base plate.***

Erickson fails to teach or suggest that edges of a cover plate and of a base plate have a declination of corners facing each other away from each other and in all of possible movements the cover plate does not contact the base plate. In fact, Erickson teaches raised lips 204, 207 at perimeter edges of the first and second end pieces (column 8, lines 36-52 and Figure 19 of Erickson). Erickson teaches that "[R]otation of curved articular surface 213 is limited when lip 204 meets lip 207" (column 8, lines 45-46 of Erickson). In contrast, the claimed cover plate does not contact the base plate in all of the possible movements because of the declination of the corners. Thus, Erickson not only fails to teach or suggest declination of corners of a cover plate and a base plate, but Erickson in fact teaches away from the claimed invention.

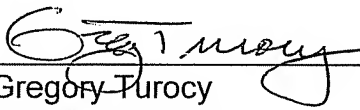
While the Examiner contends Fuhrmann teaches that upper and lower base plates can be coated with a ceramic coating, Fuhrmann fails to make up for the aforementioned deficiencies of Erickson. As a result, the cited art documents fail to teach or suggest all the claim features. Accordingly, withdrawal of the rejection is respectfully requested.

Should the Examiner believe that a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact Applicants' undersigned attorney at the telephone number listed below.

In the event any fees are due in connection with the filing of this document, the Commissioner is authorized to charge those fees to our Deposit Account No. 50-1063.

Respectfully submitted,

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